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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the second periodic report of Tajikistan

Addendum

Information received from Tajikistan on follow-up to the concluding observations*

[9 January 2014]

1. Tajikistan wishes respectfully to inform the Office of the United Nations High Commissioner for Human Rights that it is taking all measures to implement the recommendations of the Committee against Torture, adopted at the Committee's forty-ninth session (29 October–23 November 2012, Geneva), on the State party's second periodic report.

2. To ensure the timely and proper implementation of the recommendations, on 15 August 2013, the Government approved a plan of action identifying specific measures, executing agencies (ministries and departments), sources of funding and time schedules for each of the recommendations.

3. Measures have been taken under the plan to implement paragraphs 8 (a) and (b), 9 (a), 11 (c) and 14 (a), (b), (c) and (d) of the Committee's recommendations, for which information was requested by the end of 2013.

4. Specifically, in paragraph 8 of the recommendations, the Committee expressed concern about the lack of clarity as to when a person is considered to be detained, about detainees being left without basic legal safeguards during the period between arrest and official acknowledgement of detention (the written police report), as well as the lack of proper detention registers, etc. One of the recommendations, in paragraph 8 (a), is that the Code of Criminal Procedure be amended to ensure that arrest starts from the moment of de facto apprehension.

5. It should be noted that, under the Code of Criminal Procedure, the 72-hour period of detention is calculated from the time of de facto apprehension. Pursuant to article 94 of the Code, the time of de facto apprehension, calculated to the minute, is indicated in the police

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report, which is drawn up within three hours of a person being taken in by the criminal prosecution authorities.

6. In its Decision No. 1 of 25 June 2012 on the application of provisions of criminal and criminal procedure law to prevent the use of torture, the Plenum of the Supreme Court officially explained (in para. 13) that "detention of a person begins at the time of his or her de facto apprehension". Paragraph 15 of the same Decision states that "de facto apprehension should be understood as a period during which a person is deprived of the possibility to move freely and to carry out other acts at his or her own discretion (when held captive, physically restrained, closed within premises, forced to go to a place or to remain at a place, etc.)".

7. The Plenum further specified (para. 13) that falsification (incorrect indications), in the police report, of the time of de facto apprehension is considered a crime pursuant to article 323 of the Criminal Code (falsification by an official), and that any court or judge that brings such an incident to light is obliged "by means of a special ruling, to bring this fact to the attention of the procurator for review and the adoption of a procedural decision".

8. The Plenum of the Supreme Court also noted in paragraph 19 that "any violation of the three-hour period for compilation of the police report, the seventy-two-hour period of detention without a court order, or the permitted period of arrest is unlawful, and the person shall be released immediately. If there is direct intent to commit the above-mentioned illegal acts, the officials concerned shall be charged under article 358 of the Criminal Code (unlawful detention or custody)."

9. It should be noted that, pursuant to article 26 of the Constitutional Act on the Courts of 6 August 2001, the Plenum of the Supreme Court is the supreme court of justice, and its instructions on application of the Act are mandatory for the courts, other bodies and officials applying the Acts mentioned therein.

10. To strengthen the guarantees of the rights of detainees, a Joint Order of the Procurator-General, the Minister of Justice and the heads of all the country's other law enforcement agencies dated 24 October 2012 approved an Instruction on detention.

11. The Instructions also establishes that "the period of detention shall be calculated from the time of de facto apprehension" (para. 5) and "a person may be detained for no more than 72 hours, calculated from the time of de facto apprehension. At the end of this period, if pretrial detention is not adopted as a preventive measure, the detainee must be released from custody" (para. 21).

12. Paragraph 8 (b) of the recommendations proposes the establishment of an official, central register in which the arrest is scrupulously and immediately recorded, including at the minimum: the time of arrest; the reason for arrest; the names of the arresting officer(s); the location at which the person is being detained and any subsequent transfers; and the names of the officers responsible for him or her in custody.

13. In this connection, it should be noted that all places of detention maintain logs of detainees, in which the detainee's identity, the time and date of detention, the document forming the basis of the detention, and the date of and reason for any transfer to another establishment, or release are recorded.

14. Furthermore, in implementation of the Committee's recommendation, the Joint Order of the Procurator-General, the Minister of Justice and the heads of all the country's other law enforcement agencies dated 24 October 2012 approving the Instructions on detention set out in detail all the requirements for the timely registration of detainees.

15. Paragraphs 13 and 46 of the Instructions provide that the following information must be recorded for all detainees in the register of detainees, or the log of detainees held in temporary detention centres:

- Full name of the detainee;
- Date and time of apprehension and placement of the detainee;
- Grounds for the detainee being placed in a temporary holding cell or guardhouse (number and date of police report, decision of the criminal prosecution authorities or the court);
- Offence of which the detainee is suspected or accused;
- Name of the agency, rank, title and full name of the arresting officer(s);
- Oral statements (complaints) made by the detainee;
- Full name of the defence counsel notified of the place of detention of the detainee or full name and title of the person receiving the telephone message with that information;
- Telephone number at which the defence counsel has been given that information;
- Date and time of notification of the detainee's family;
- Full name and telephone number of the family member who was given the information;
- Results of the medical examination;
- Results of the search of the detainee's person;
- Signatures of the officers in charge of the detention or temporary detention.

16. A copy of the entry in the register is available on request to the detainee and his or her representative or counsel (Instructions, para. 16).

17. Paragraph 3 of the above-mentioned Joint Order approving the Instructions on detention states that all law enforcement agencies must, by 1 January 2013, ensure that they use registers of detainees in conformity with the requirements of the Instructions.

18. Pursuant to paragraph 5 of the plan of action to implement the recommendations of the Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, which was approved by Government Decree on 15 August 2013, a working group has been set up to consider the need for amendments to the Criminal Code and the Act on the procedure for and conditions of detention of suspects, accused persons and defendants to improve the procedure for registering detentions, explaining the rights of detainees and notifying relatives of a detention.

19. In paragraph 9 of the recommendations, the Committee expresses concern at the allegations made by various sources of the use of torture and ill-treatment during the first hours of interrogation in police custody and pretrial detention. In this connection, it recommends that immediate and effective steps should be taken to prevent this, and that all incidents and reports of torture and ill-treatment should be promptly, effectively and impartially investigated.

20. As already noted, in order to improve the legal framework for preventing torture and ill-treatment at the time of arrest, as well as in places of temporary detention, a Joint Order of the Procurator-General, the Minister of Internal Affairs, the Minister of Justice, the Chair of the State Committee on National Security, the Director of the State Financial Audit and

Anti-Corruption Agency and the Director of the Drug Control Agency in the Office of the President approved an Instruction on detention on 24 October 2012. The Instruction lays down, inter alia, that:

- The law enforcement officer carrying out the arrest must explain the detainee's procedural rights (including the right not to testify against oneself or one's close relatives, the right to the assistance of a defence lawyer, etc.) immediately on applying restrictions to his or her freedom of movement and choice of action, ensure that conditions allow the detainee to exercise those rights, and take timely measures to meet any legitimate requests he or she may make (para. 10);
- After the detainee's rights have been explained at the place of actual detention, he or she is escorted to the offices of the criminal prosecution authorities or a place of detention. This must be done immediately, without any unjustified delays on the way. The use of violence, torture and any other cruel or degrading treatment is prohibited (para. 11);
- As soon as a detainee is brought to the offices of the criminal prosecution authorities, the form explaining the rights of detainees (attached to the Instruction) is filled in, completion of each item being mandatory. The upper part of the form is attached to the police report and is an integral part of it. The lower part of the form (the copy) is given to the detainee against signature and may not be confiscated (para. 12);
- After a detainee is informed of his or her rights, the following are noted in the criminal prosecution authorities' register: time and place of apprehension, grounds (reasons) for apprehension, name of the arresting officer(s), etc. (see details above);
- Once that information has been recorded in the register, the detainee is given a medical examination by a doctor in a separate office in the building of the criminal prosecution authorities. The results are recorded in the medical examination report, which is attached to the police report and is an integral part of it (para. 17);
- The arresting officer draws up the police report immediately after the medical examination (para. 18);
- The detainee is then taken immediately to the place of detention (para. 19);
- The right to a defence in the sense of article 22 of the Code of Criminal Procedure guarantees detainees all procedural rights from the moment of apprehension, including that of the defence counsel to meet with the detainee for consultation without delay (para. 23);
- Detained persons may be held only in premises specially equipped for that purpose which conform to health and safety standards (para. 45);
- Before a detainee is placed in a temporary holding facility or guardhouse, the officer responsible for receiving detainees records all the necessary data on the detention and the detainee in the register of the temporary holding facility or guardhouse (details given above);
- The officer responsible for recording information in the register has the right to personally notify a relative or friend of the detainee, or to allow the detainee to do so. Such notification must be given to an adult relative of the detainee (para. 47).

21. In November 2013, to ensure the rapid and effective detection, disclosure and investigation of cases of torture, the Office of the Procurator-General, with the assistance of the Office of the Organization for Security and Cooperation in Europe in Tajikistan, issued

a manual on the legal framework and organization of the activities of the procuratorial authorities in preventing, detecting and investigating torture.

22. The manual was drafted taking account of the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Istanbul Protocol), as well as other theoretical and practical recommendations in this area, proposals made by representatives of the courts, the law enforcement agencies, the prison service, lawyers and voluntary and non-governmental organizations.

23. The manual is designed for procurators and investigators and is intended to ensure the effectiveness of measures to prevent, detect, and investigate reports and allegations of, torture and ill-treatment.

24. Training sessions on using the manual held for procurators and investigators in all regions of the country have been widely covered by the press.

25. As a result of the measures taken, the number of complaints and allegations concerning the use of torture has declined significantly, as has the number of such allegations being confirmed.

26. In 2012, for instance, the procurator's office received 22 complaints about law enforcement officers using torture and other forms of violence against citizens. The allegations were confirmed and criminal proceedings were instituted in nine cases, of which two fell under article 1,431 of the Criminal Code (torture) and seven involved the use of other forms of violence by officials (art. 316, para. 3 (a) – improper exercise of authority). Seven of the cases were then taken to court.

27. In 2013, 16 such complaints and representations were received. The allegations were confirmed in four cases, with two criminal cases brought under article 1,431 (torture) and two concerning the use of other forms of violence by officials brought under article 316, paragraph 3 (a) (improper exercise of authority). After investigation, three of the cases were taken to court.

28. With regard to recommendation 11 (a), it should be noted that, in accordance with paragraph 6 of the plan of action to implement the recommendations of the Committee against Torture, approved by Government Decree on 15 August 2013, a working group composed of representatives of the relevant ministries and departments has been set up under the Supreme Court to study the need to amend legislation to prevent perpetrators of torture escaping criminal responsibility on the basis of changes in circumstances and expiry of the statute of limitations The working group will submit proposals on the issue in 2014.

29. With regard to recommendation in paragraph 14 (a) on the provision of sufficient budgetary resources to improve conditions in all places of detention, the Government does allocate sufficient budgetary funds each year to provide for prisoners. The funds allocated are distributed article by article, allowing the prison system to carry out its tasks in an even manner.

30. Over the past five years, much has been done to bring detention centres into conformity with international standards.

31. All holding cells and baths have been refurbished; bathrooms and toilets have been fitted with water heaters so that prisoners may have both cold and hot water. Each of the facilities has a common dining room, as well as an equipped kitchen (tea room), that meets sanitary requirements.

32. In respect of eliminating the complete isolation of prisoners serving life imprisonment, improving their living conditions and repealing legislation limiting their contacts with lawyers and family members (recommendation 14 (b)), it should be noted that

the regime for this category of prisoners is based on their particular risk level, the length of their sentence and the existence of complex psychological conditions.

33. In accordance with the Penalties Enforcement Code and departmental regulations, prisoners serve sentences in special-regime colonies separately from those sentenced for particularly dangerous repeat offences. They are generally held in cells with no more than two inmates. At the prisoner's request or in other cases as necessary (threat to their personal safety), they may be held in isolation cells, or in cells with more than two people. Their working regime is organized in accordance with the requirements of solitary confinement. Prisoners are given a 90-minute period of exercise every day. They may be allowed up to two hours' exercise time for good behaviour, if conditions so allow. They are checked every 30 minutes.

34. Under article 16, paragraph 7, of the Criminal Code, prisoners may have the services of a lawyer or of other persons entitled to provide such assistance.

35. In respect of recommendation 14 (c), it is planned, under paragraph 4 of the plan of activities to implement the recommendations of the Committee against Torture, approved by Government Decree on 15 August 2013, to speed up the procedure for ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the establishment of a national preventive mechanism.

36. To this end, it was decided to set up a pilot working group on the national preventive mechanism, and on 6 August 2013, the Commissioner for Human Rights put in place a working group to visit and monitor prisons. In addition to visiting prisons, it will also hold training sessions and meetings with prison staff to train them in international and national standards for the treatment of persons deprived of their liberty.

37. A monitoring group within the working group includes representatives of the Office of the Commissioner for Human Rights and of NGOs whose activities relate to protecting the right to freedom from torture, including members of the Coalition Against Torture.

38. The working group's rules of procedure and work plans have been approved, as have those of the prison monitoring group. In line with the plan approved, the monitoring group will begin its inspections of remand centres, temporary holding facilities and other places of detention and restriction of liberty in the first half of 2014. A report giving the results of each visit will be posted on the official website of the Commissioner for Human Rights

39. The Commissioner for Human Rights and his staff made 12 visits to prisons to monitor respect for the rights of persons deprived of their liberty in 2013. Furthermore, complaints from both citizens and international and non-governmental organizations this year prompted visits to remand centres and several prisons in the towns of Dushanbe, Qŭrghonteppa and Khŭjand.

40. This year, the Commissioner for Human Rights, together with the Office of the Procurator-General, the Executive Office of the President and the National University, organized training sessions and seminars in prisons and remand centres in Dushanbe, Vahdat, Yovon and Norak and three facilities in Khŭjand. Similar activities were also organized in six regions of the country jointly with the Office of the United Nations High Commissioner for Human Rights.

41. Tajikistan is ready to cooperate with all the international and non-governmental organizations, including the International Committee of the Red Cross (ICRC), to improve the conditions for prisoners, and to ensure openness and transparency in the activities of correctional institutions.

42. During the many meetings held with representatives of the international and non-governmental organizations, including ICRC, senior Ministry of Justice officials have discussed ways of bringing the country's penal system more into line with international standards, as well as the procedure for visits to correctional institutions.

43. A constructive proposal was put to the ICRC representatives on planning and procedure for the visits to Ministry of Justice correctional facilities.

44. ICRC proposed a draft Agreement between the Government of Tajikistan and ICRC on humanitarian activities in relation to detainees or prisoners, in which some of the points did not comply with Tajik legislation.

45. A working group consisting of representatives from the relevant ministries and departments was set up pursuant to Government Instruction No. 14784 (25-6) of 4 February 2009 to work on the draft and achieve consensus on the Agreement.

46. In respect of paragraph 14 (d) of the recommendations about the inadequate effectiveness of the mechanism for complaints from prisoners, the Act on the procedure for and conditions of detention of suspects, accused persons and defendants significantly improves the guarantees of confidentiality of prisoners' complaints. Under its article 21, complaints and petitions sent by prisoners to the court, the Commissioner for Human Rights, the procurator and other bodies authorized to carry out supervision of places of detention may not be subject to censorship and must be delivered to their destination in a sealed envelope no later than one working day after being submitted.

47. Prisoners' complaints and statements are sent through the prison administration, where they are registered and forwarded to the authority concerned. Prisoners are informed when the complaints and allegations are forwarded, and given the relevant registration number. Any written response from the responding authority is given to the prisoner to read. No cases have been reported in recent years of complaints and statements not reaching the addressee.

48. Sealed suggestion and complaints boxes, which are opened in the presence of the supervising procurator, are located in the accommodation areas of the facilities.

49. We take this opportunity to express our appreciation to the Office of the United Nations High Commissioner for Human Rights for the constant attention paid to the observance of human rights in Tajikistan, and give assurance that Tajikistan will take all measures to implement the recommendations of the Committee against Torture and other special procedures of the Human Rights Council.